

TITLE 14. DEPARTMENT OF BOATING AND WATERWAYS

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the California Department of Boating and Waterways (Department) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to amend adopt sections 6000 through 6000.6 in Title 14 of the California Code of Regulations (CCR), relating to permits for an activity on boat launching facilities owned by the Department.

WRITTEN COMMENTS

A written comment period has been established commencing May 26, 2006 and terminating on July 10, 2006. Any interested person may present written comments concerning the proposed regulation no later than 5:00 p.m. July 10, 2006. Comments submitted after this time and date will not be considered. Please submit your written comments, relevant to the proposed regulatory action, to:

Mike Sotelo
California Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, CA 95815
Facsimile (FAX): (916) 263-0648

PUBLIC HEARING

The Department does not propose to conduct a public hearing for this proposed regulatory action. However, in accordance with section 11346.8 of the Government Code, any interested party, or his or her duly authorized representative, may submit a request for a public hearing, in writing to the Department, at least 15 days before the close of the written comment period.

Please submit your written request for a hearing to the contact person listed above.

AUTHORITY AND REFERENCE

This regulatory action is taken pursuant to the authority vested by Harbors and Navigation Code section 63.9, which authorizes the Department to adopt the

proposed regulations, which would implement, interpret, or make specific sections 63.9 and 651 (r) of the Harbors and Navigation Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The regulations the Department proposes to adopt through the authority found in 63.9 of the Harbors and Navigation Code allows the Department to adopt rules and regulations it deems necessary to carry out the provisions of division 1 of the Harbors and Navigation Code. The proposed adoption of Article 2 in Chapter 1, division 4 of the CCR would require a permit for an activity on boat launching facilities owned by the Department of Boating and Waterways.

The Department is proposing the adoption of these regulations due to concerns about risk and liability expressed by a boat launch facility's operator under contract with the Department of Boating and Waterways to operate a boat launching facility. Specifically, they report that they have encountered a problem concerning inappropriate commercial use of Department property and facilities. In addition, during the course of the development of these proposed regulations, the Department has become aware of a need to adopt regulations for the granting of permits for an activity on boat launching facilities owned by the Department of Boating and Waterways.

Therefore, due to a current lack of regulatory provisions allowing the Department and the operators to exercise reasonable and prudent control of activities on public property owned by the Department, the Department is now proposing the following regulations be adopted in Title 14 CCR:

Adopt 6000 Title. This section provides a title or citation for this article and serves to provide clarity to identify the subject-matter of the article.

Adopt 6000.1 Applicability. Since there are currently no regulations that address the need for a permit to hold activities on the Department's boat launching facilities, this section would define the person or persons to whom this requirement would apply. This section is needed for clarity.

Adopt 6000.2 Definitions. Since this would be a new article in Title 14 CCR, definitions are needed to clarify, interpret, or make specific the terms used in this article. This section would serve to standardize the terms used so that the affected public may readily understand their use in this article.

Adopt 6000.3 Enforcement of this Article. Activities on boat launching facilities have not been previously required to be permitted by the Department. This regulation would specify that commercial activities or soliciting for commercial activities without a permit are prohibited on the Department's boat launching facilities. It specifies that enforcement of this article may be done by the director

or any designated employees; additionally, that the director or any designated employees may solicit the advice or services of all federal, state, local or regional agencies to also carry out the provisions of this article; and lastly, that a violation of section 6000.3, of this article, is a misdemeanor. After it is adopted, this regulation would prohibit activities on boat launching facilities owned by the Department, and would also serve to reduce liability for the state/Department.

Adopt 6000.4 Issuance of Permits. There is currently no section which describes the process for issuing a permit to conduct an activity of boat launching facilities. This section defines when a permit is required, the permit application standardization and availability, the allowable time the Department has to approve or deny an application, the criteria that the Department uses to issue a permit, and the duration of a permit. After this section is adopted, the affected public should be able to determine how, when, where, why, and the time limit for a permit to be issued.

Adopt 6000.5 Denial of Cancellation of a Permit Issued by the Department. There currently is no regulation that specifies or defines the conditions for which a permit may be denied or cancelled. This section describes the four conditions for denying or canceling a permit, including: incomplete information on an application; committing a fraud; the permit holder not present or available for contact by a peace officer or representative of the department or the operator; and the conduct of a permit holder or person attending the event. This section is necessary to maintain a controllable event and to protect the interests of the people of the state.

Adopt 6000.6 Appealing Denial of Cancellation of Permit. There currently is no regulation which would allow a permit applicant to appeal the denial or cancellation of a permit. This regulation would specify the procedure and time period for filing an appeal and the exclusion of a non-timely filing of a permit, as a denial that could be appealed. This section is necessary to provide an avenue for persons to appeal the denial or cancellation of a permit, but exclude late filings from appeal.

PLAIN ENGLISH REQUIREMENTS

The Department prepared the proposed regulations pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirement of Government Code section 11342.580 and 11346.2 (a) (1). The proposed regulations are considered non-technical and are written to be easily understood by the persons affected by them.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5 (a) (13), the Department must determine that no reasonable alternative considered by the Department, or

that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, and would be as effective and less burdensome to affected private persons than the proposed action. The Department invites public comment on alternatives to the proposed regulations.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made the initial determination that adoption of this proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has determined that the proposed regulatory action will not create or eliminate jobs within the state of California, create new businesses or eliminate existing businesses within the state of California, and will not expand businesses currently doing business within the state of California.

DETERMINATION OF EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulatory action will have little or no effect on small businesses. The kayaking company that provided the impetus for regulatory action may move to another staging area where such activity is permitted.

EFFECT ON HOUSING COSTS

The Department has initially determined that this regulatory action will have no effect on housing costs.

IMPACTS ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not

constitute a “new program or level of service of an existing program” within the meaning of section 6 of Article XIII of the California Constitution. The Department has also determined that no non-discretionary costs or savings to local agencies will result from the proposed regulatory action.

COST OR SAVINGS TO STATE AGENCIES

The Department has determined that no savings or increased costs to any State agency will result from this regulatory action.

COSTS OR SAVINGS TO FEDERAL FUNDING TO THE STATE

The Department has determined that this regulatory action imposes no costs or savings in federal funding to the State.

REPORTING REQUIREMENTS

The proposed regulatory action makes no reporting requirement upon businesses.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATORY ACTION

The Department has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the Department contact person named in this notice. The information upon which the Department relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, the Department may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If the Department does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the department contact person named in this notice. The Department will accept written comments on any changes for 15 days after the modified text will be made available.

AVAILABILITY ON THE INTERNET

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations are also available on the Department’s Internet Home Page: <http://www.dbw.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the Final Statement of Reasons which will be made available after the Department of Boating and Waterways has adopted the proposed regulations in its current or modified form, should be sent to Mike Sotelo, the contact person, at the address stated below.

CONTACT PERSON

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of Reasons and/or the proposed text of the regulation, inquiries regarding the rulemaking file and the questions on the substance of the regulatory action may be directed to:

Mike Sotelo
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2000 Evergreen Street, Suite 100
Sacramento, CA 95815
Telephone (916) 263-0787
Fax (916) 263-0648